IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 3099 of 2007()

CRRP.27/2005 of VI ADDL.SESSIONS COURT, ERNAKULAM
MC.41/2002 of SUB DIVISIONAL MAGISTRATE, FORT KOCHI

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PETITIONER: RESPONDENT IN M.C/PETITIONER IN CR.RP

V.K.PRATHAPAN, AGED 45, S/O.KRISHNAN,
18/553 5A, PALLICHAL ROAD, KOCHI-5.

BY ADV. SMT.R.RANJINI
SRI.PAVITHRAN RAVINDRA NATH

RESPONDENTS: PETITIONER IN M.P & STATE OF KERALA/RESPONDENTS

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1. E.M.BIVEIRA, HOUSE NO.18/1647,
PALM VILLAGE, PALLICHAL ROAD,
KOCHI - 5, RAMESWARAM VILLAGE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3099 of 2007

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Dated this the 9th day of October, 2007

O R D E R

The petitioner is aggrieved by an order passed under Section 138 Cr.P.C. by the Sub Divisional Magistrate. A conditional order under Section 133 Cr.P.C. was earlier passed. Enquiry under Chapter XB followed and the Sub Divisional Magistrate finally directed that two coconut trees standing in the property of the petitioner must be cut and removed.

2. The petitioner preferred a revision against the said order and the learned Sessions Judge, by the impugned order, copy of which is produced as Annex.A9, dismissed the said revision petition. The petitioner is aggrieved by the concurrent directions issued to him to cut and remove the two trees in question.

3. I have heard the learned counsel for the petitioner. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked is the extra ordinary inherent jurisdiction. Such jurisdiction is not to be invoked as a matter of course. Satisfactory, compelling and exceptional reasons must be shown to exist to justify

the invocation of such jurisdiction. Any and every error committed by the subordinate courts, even assuming that such errors have been committed, will not by itself persuade this court to invoke such jurisdiction. Has there been abuse of process of the court? Has there been failure/miscarriage of justice? These are the crucial questions to be considered.

4. Having heard the learned counsel for the petitioner at some length, I find that the crux of the contention is that the finding of fact entered by the Sub Divisional Magistrate and subsequently confirmed by the Revisional court that the trees are in such a condition that they pose danger to the adjacent building in the adjoining property is not correct. That is the crucial contention raised. This Court cannot under Section 482 Cr.P.C. convert itself to a court considering the challenge at the third tier against the finding of fact.

5. The learned counsel for the petitioner has laboriously taken me through Annex.AI report as also Annex.A7 report. The learned counsel submits that the error committed by the court on facts is resulting in miscarriage of justice and therefore the powers under Section 482 Cr.P.C. are liable to be invoked.

6. I have gone through the order passed by the learned Sessions Judge in revision as also the order passed by the Sub Divisional Magistrate under Section 138 Cr.P.C. These orders clearly show that materials were evaluated and the courts came to the conclusion that the trees in question did pose danger to the adjacent building occupied by the respondent herein. In fact Annex.A6 report shows that damage had been caused to the roof of the building and it is in these circumstances that the opinion was expressed that the trees cause danger to such building. The order passed in revision further clearly shows that the Sub Divisional Magistrate had inspected the property and had prepared a report, against which no objections were raised. I am, in these circumstances, satisfied that there are absolutely no features in this case which would justify or warrant the invocation of the extra ordinary inherent jurisdiction available to this court under Section 482 Cr.P.C.

7. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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